(8)

C.S. 825

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

S.A. No. ...396.../2004

1. Chain Singh, aged 45 years
   Son of Ranjan Singh
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

2. Amartin aged 55 years
   Son of Ranjan Singh
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

3. Jagturam aged 31 years
   Son of Late Tunhar
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

4. Sabeer Singh aged 31 years
   Son of Late Tunhar
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

5. Dhaneshwar aged 29 years
   Son of Late Tunhar
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

P. R. No. 12801 dt. 18-6-04 Presented by Shri Ashok Sahu

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6. Jagati Bai
   Daughter of Late Tunhar
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

7. Sushila Bai
   Daughter of Late Tunhar
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

8. Malti Bai
   Daughter of Late Tunhar
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

9. Phooldai
   Daughter of Late Tunhar
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

..... **Appellants**
(Plaintiffs)

VERSUS

1. Smt. Chowkdai, aged 70 years
   Widow of Charan Singh
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

2. Asharam aged 50 years
   Son of Charan Singh
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

3. Jagdish aged 45 years
   Son of Charan Singh
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

4. Jagat aged 45 years
   Son of Charan Singh
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

5. Rajeshwar aged 35 years
   Son of Charan Singh
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

6. Ashmati
   Daughter of Charan Singh
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

7. Shanti Bai
   Daughter of Charan Singh
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

8. Kunti Bai
   Daughter of Charan Singh
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

9. Kunti Bai
   Daughter of Charan Singh
   Resident of Village Sonabal
   Tahasil Kondagaon Distt. Bastar (C.G.)

10. Kaili Bai aged 70 years
    Daughter of Belmati
    Resident of Village Shivni
    Tahasil Jagdalpur Distt. Bastar (C.G.)

11. Kamaldei aged 40 years
    Daughter of Belmati
    Resident of Village Giroula
    Tahasil Kondagaon Distt. Bastar (C.G.)

    (Deceased through legal representatives)

11A. Heera Singh
     Husband of Late Kamaldei
     Resident of Village Giroula
     Tahasil Kondagaon Distt. Bastar (C.G.)

11B. Chandar Singh
     Son of Kamaldei
     Resident of Village Giroula
     Tahasil Kondagaon Distt. Bastar (C.G.)

(12)

11C. Tijai Bai
Daughter of Kamaldei
Resident of Village Chikhalputi
Tahasil Kondagaon Distt. Bastar (C.G.)

12. State of Chhattisgarh
Through Collector
Bastar (C.G.)

..... **Respondents**
(Defendants)

Appeal Valued Rs. 7160/-
Affixed Court fee Rs. 825/-

(Second Appeal under section 100 of Civil Procedure Code against the judgment and decree in Civil Appeal No. 2A /2002 dated 21.4.2004. Passed by Shri Shivmangal Pandey First ADJ Bastar confirming the judgment and decree passed by Shri Rajendra Pradhan C.J. Class-II Kondagaon, in Civil Suit No. 8A/96 dated 29.11.01)

The appellants beg to submit as follows :-

1. The following family tree will be helpful for proper understanding of the case :-

(47)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Second Appeal No.396 of 2004

Chain Singh and others

Vs.

Chowkdar and others

JUDGMENT

Post for 07.01.2005

Sd/-
Sunil Kumar Sinha
Judge

Noted
7-1-2005
Counsel for Respondents
(M.V. PARANJPE)
Advocate

V.D. Bonerji
Counsel for Appl
7-1-2005

(48)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Second Appeal No.396 of 2004

Chain Singh & others

Vs.

Smt. Chowkdai and others

Shri V.D. Vajpai, Counsel for the appellants.

Shri Manoj Paranjpe, Counsel for the respondents on Caveat No.40/2004.

JUDGMENT

(7.1.2005)

SUNIL KUMAR SINHA, J,

Heard on question of admission.

(2) The plaintiffs have filed this appeal under section 100 of the Code of Civil Procedure against the judgment and decree dated 21.4.2004 passed in Civil Appeal No.2-A/2002 by the First Additional District Judge, Jagdalpur (Bastar), arising out of judgment & decree dated 29.11.2001 passed in Civil Suit No.8-A/96 by Civil Judge, Class-II, Kondagaon, Bastar (C.G).

(3) The plaintiffs filed a suit praying that the sale deed dated 01.6.1979 executed by Smt. Belmati in favour of Chowkdai be declared null and void and they be declared to be the owners of the property. They also prayed for partition claiming ½ share in the said property.

(4) The plaint allegations are that both the parties are members of the same family belonged to late Sukru. They are governed by Mitakshara Hindu Law. Late Sukru was having 25.30 acres of land in village Sonabal, Tahsil Kondagaon, Distt. Bastar. He died on 17.6.1960. After death of Sukru these properties were received in succession by his two sons Ranjan Singh and Charan Singh, alongwith his widow Smt.Belmati. The records were also mutated on their names. Some other landed properties were also purchased by the two brothers and the entire property came as 27 acres. The plaintiffs are successors of branch of Ranjan Singh whereas the defendants are successors of branch of Charan Singh. It is also alleged in para 4 of the plaint that both the brothers divided the lands in two parts and they were in separate possession and enjoyment of the same. On the date of cause of action, the plaintiffs came to know that certain lands have been sold under the aforesaid sale deed by Smt. Belmati to Smt.Chowkdai whereas she was not entitled to alienate the same. It is also pleaded that Smt. Belmati was an old and infirm lady and was not in a position to move, therefore, she was not in a position to execute the sale deed. In fact, the sale deed was not executed by her.

(5) The defendants filed their written statement denying the contentions of the plaintiffs. It was pleaded by them that in a Revenue Proceeding No.5-A/-27/1978-79 on 24.7.1979 a regular partition had taken place between the parties and in the said partition 1/3rd of the entire lands admeasuring 8.92 acres was allotted in share of Smt.Belmati Bai. After the said

partition, on 01.6.1979, Belmatibai sold these lands to defendant no.1 through a registered sale deed who came in possession thereof.

(6) The learned trial Court framed various issued in this case and after recording the evidence of the parties dismissed the suit of the plaintiffs holding that there was a partition in the family vide Revenue Proceeding No.5-A/-27/1978-79 dated 24.7.1979 and in the said partition, Belmati Bai got the aforesaid 1/3rd share and then only she executed a sale deed in favour of defendant no.1. Almost all the issues were decided against the plaintiffs.

(7) Against the aforesaid judgment and decree passed by the trial Court, the plaintiffs filed an appeal before the lower appellate Court in which the lower appellate Court also dismissed their appeal and confirmed the judgment and decree passed by the trial Court. Having lost in both the courts below, the plaintiffs have filed this appeal before this Court.

(8) Learned counsel for the appellants submits that the trial Court as well as the first appellate Court erred in law in holding that there was partition through the above revenue proceedings and in the said partition, the lands were allotted in the share of Smt.Belmati. He further submits that the finding in relation to the authority to execute a sale deed and the factum of execution of the sale deed is also erroneous.

(9) I have gone through the judgment and decree passed by the two courts below and have also perused the records. In answer to issue no.2, the trial Court has made a detailed

discussion in relation to partition in the family and ultimately a positive finding has been recorded vide paragraphs 13 to 17 of the judgment that there was no partition in the family prior to the institution of the aforesaid partition proceedings before the Revenue Court and in the said partition proceedings only, an absolute partition took place in the family in which all the co-sharers of 3 branches received equal shares to the extent of 1/3rd each. Consequently, Smt. Belmati also received 1/3rd share in the said partition admeasuring 8.92 acres and then only she executed a sale deed dated 1.6.1979 in favour of defendant No.1 Chowkdai who is the widow of Charan Singh. The lower appellate Court has also recorded the same findings and confirmed the judgment of the trial Court on this point. I do not find any infirmity in the aforesaid findings recorded by the two Courts below as learned counsel for the appellants failed to point out any perversity in the same. These concurrent findings are upheld.

(10) Now coming to the next point raised by learned counsel for the appellants regarding the pleadings of old age and denial about execution of any document by Smt.Belmati in favour of defendant no.1, this Court can only say that the said challenge to the sale deed on the said grounds by third party was not permissible under the law. In this regard, I would like to refer to a judgment, though available as a short-note (Note no.154) in ***1960 MPLJ (Sunderlal –Vs- Anup Kunwar Bai)*** in which it has been held that "an attack on the sale deed on account of fraud and want of consideration, the grounds are only available

to a party to the sale deed alone and the stranger to transaction cannot attack the sale deed on these grounds". Admittedly, the plaintiffs are not party to the transaction. Hence, they cannot challenge the deed on the ground of fraud. Therefore, this ground also fails and the concurrent findings recorded by the two courts below in relation to the valid execution of the sale deed are also upheld.

(11) It is important to mention this fact here that this Court is dealing with this matter in a second appeal in which jurisdiction is limited to the provisions of Section 100 C.P.C. Hon'ble the Apex Court has held that under Section 100 of the Code of Civil Procedure, the jurisdiction of the Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with the pure questions of fact while exercising its jurisdiction u/s 100 C.P.C (***Please see Roop Singh (Dead) through LRs –Vs- Ram Singh (Dead) through LRs*** reported in ***(2000) 3 SCC 708***. It is also to be noted that the existence of substantial questions of law is the *sine qua non* for the exercise of jurisdiction under the amended provisions of Section 100 of the Code of Civil Procedure and unless such questions are involved, the appeals are not to be entertained (***Please see Thiagarajan and others Vs. Sri Venugopalaswamy B. Koil and others*** reported in ***(2004) 5 SCC 762).***

(12) In the result, I do not find any reason to interfere with the concurrent findings recorded by the two Courts below in this case. Since no substantial questions of law are involved in this case, this appeal has no force and the same is dismissed at the admission stage itself. No orders as to costs.

Sd/-
Sunil Kumar Sinha
Judge

Rao